

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

In re: Heartland Wireless)
Communications, Inc.,)
)
 Debtor.) Case No. 98-2692
_____)
)
HUNT CAPITAL GROUP, L.L.C.,)
DAVID E. WEBB, STEVEN JOHNSON,))
DAVID EARL WEBB and ROY)
CARTER,)
)
 Appellants,)
)
 v.) C.A. No. 01-500-SLR
)
NUCENTRIX BROADBANK NETWORKS,)
INC., the Reorganized Debtor)
f/k/a Heartland Wireless)
Communications, Inc., CARROLL)
D. MCHENRY, MARJEAN HENDERSON,))
QUAD-C, INC., QUAKER CAPITAL)
MANAGEMENT CORP., THE MAINSTAY)
FUNDS, ON BEHALF OF ITS HIGH)
YIELD CORPORATE BOND FUND)
SERIES, ASPEN PARTNERS,)
NORTHSTAR INVESTMENT)
MANAGEMENT CORP., WAYLAND)
INVESTMENT FUND, L.L.C., SUN)
AMERICA CBO LIMITED, CONDOR)
PARTNERS IV, L.L.C., TERRY S.)
PARKER, JOHN A. SPRAGUE and)
RICHARD T. WEATHERHOLT,)
)
 Appellees.)

MEMORANDUM ORDER

At Wilmington this 23rd day of September, for the
reasons that follow;

It IS ORDERED that the June 11, 2001 decision of the
United States Bankruptcy Court for the District of Delaware is
affirmed and the appeal denied.

1. **Standard of Review.** This court has jurisdiction to hear an appeal from the bankruptcy court pursuant to 28 U.S.C. §§ 1334 and 158(a). In undertaking a review of the issues on appeal, the court applies a clearly erroneous standard to the bankruptcy court's findings of facts and a plenary standard to that court's legal conclusions. See Am. Flint Glass Workers Union v. Anchor Resolution Corp., 197 F.3d 76, 80 (3d Cir. 1999). With mixed questions of law and fact, the court must accept the bankruptcy court's "finding of historical or narrative facts unless clearly erroneous, but exercise[s] 'plenary review of the [bankruptcy] court's choice and interpretation of legal precepts and its application of those precepts to the historical facts.'" Mellon Bank, N.A. v. Metro Communications, Inc., 945 F.2d 635, 642 (3d Cir. 1991) (citing Universal Minerals, Inc. v. C.A. Hughes & Co., 669 F.2d 98, 101-02 (3d Cir. 1981)). The district court's appellate responsibilities are further informed by the directive of the United States Court of Appeals for the Third Circuit, which effectively reviews on a de novo basis bankruptcy court decisions. In re Hechinger, 298 F.3d 219, 224 (3d Cir. 2002); In re Telegroup, 281 F.3d 133, 136 (3d Cir. 2002).

2. **Facts.** On December 4, 1998, debtor Heartland Wireless Communications, Inc. filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code. Debtor filed at that time a plan of reorganization that had been

negotiated between and approved by debtor and its senior noteholders. Under the plan, as characterized by appellants, "the senior noteholders would obtain 97% of the stock of the reorganized Heartland and the holders of subordinated notes, existing common stock and litigation claims would obtain the remaining 3%." (D.I. 12 at 7) Appellants were holders of common stock and, therefore, were parties in interest to the bankruptcy case entitled to notice and to participate in the bankruptcy proceedings. Debtor's plan of reorganization was confirmed by order of court dated March 15, 1999. (D.I. 3, Ex. 2) Appellants neither objected to nor appealed the confirmation order.

3. On December 4, 2000, appellants initiated litigation in Bryan County, Oklahoma against defendants. Each of the named defendants was either an officer, director or noteholder of the debtor; certain of the defendants served on either (or both) of the Ad Hoc Noteholder Committee or Official Committee of Unsecured Creditors prior to and during the bankruptcy case. Appellants in their lawsuit alleged "numerous state law causes of action founded, primarily, upon [a]ppellees' massive undervaluation of Heartland by excluding significant assets, by excluding value relating to substantial components of Heartland's business operations and by intentionally failing to disclose information known to [a]ppellees which materially affected Heartland's value." (D.I. 12 at 7-8)

4. Appellees removed the Bryan County case to the United States District Court for the Eastern District of Oklahoma on February 12, 2002. The following day, appellees filed the motion at issue in the bankruptcy court, styled an "Emergency Motion to Enforce Plan of Reorganization and Confirmation Order and Motion for Expedited Hearing." A telephonic hearing was conducted by the bankruptcy court on February 22, 2001. On April 11, 2001, the district court in Oklahoma transferred appellants' lawsuit to this court. The bankruptcy court granted the appellees' emergency motion on June 11, 2001, and ordered appellees to dismiss their lawsuit. This appeal followed.

5. **Analysis.** The bankruptcy court in its June 11, 2001 order relied on 11 U.S.C. § 1141(a) for the proposition that "the provisions of a confirmed plan bind . . . any creditor [or] equity security holder . . . in the debtor," regardless of whether the claim or interest of the creditor or equity security holder was impaired under the plan and regardless of whether such creditor or equity security holder accepted the plan. The bankruptcy court found that "the allegations in the Oklahoma action could and should have been raised in the course of the bankruptcy proceedings before confirmation of the Plan of Reorganization." (D.I. 3, Ex. 14 at 2) The bankruptcy court further found that, in the context of their lawsuit, appellants are bound by the order of confirmation, specifically noting

paragraphs 7-9, 16-18, 22, 37, 48 and 51 of that order. (D.I. 3, Ex. 14 at 3-6) Based on the authority conferred by Fed.R.Bankr.P. 3020(d) and section 13 of the confirmed plan of reorganization, the bankruptcy court granted appellees' motion to enforce.

6. The court finds no legal error in the bankruptcy court's reasoning. Indeed, the facts at bar are analogous to those reviewed by the United States Court of Appeals for the Third Circuit in In re: PWS Holding Corp., 2002 WL 31030872 (3d Cir. Sept. 12, 2002) (creditor who had opportunity to contest language in debtor's plan of reorganization, which provided for the extinguishment of any fraudulent transfer claims that might be asserted on creditors' behalf, and whose objections to plan confirmation were overruled in plan confirmation order from which he had not appealed, was barred by confirmed plan from later seeking to prosecute fraudulent transfer claims in state court). Despite their linguistic efforts, the court agrees with the characterization that appellants' lawsuit is a collateral attack on the plan of reorganization and confirmation order, as appellants essentially charge fraud in the bankruptcy process and on the bankruptcy court.

7. **Conclusion.** For the reasons stated above, the June 11, 2001 order of the bankruptcy court is affirmed. Concurrent with this memorandum order, the court will enter an order of

dismissal in appellants' lawsuit captioned Hunt Capital Group,
L.L.C., et al. v. Carroll McHenry, et al., C.A. No. 01-255-SLR.

Sue L. Robinson
United States District Judge